IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.1686 OF 2006

The State of Maharashtra. ...Applicant.
Vs.
Atik Abdul Rashid Qureshi and ors.
...Respondent.

Mr. A.S.Gadkari, A.P.P. for the State.
Mr.Vikas Shivarkar for the Respondents.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :10TH JANUARY,2007.

P.C.

1. Heard.

2. This is an application seeking leave to prefer an appeal challenging the acquittal of the respondents by Ad-hoc Additional Sessions Judge, Pune by Judgment and order dated 19.11.2005 thereby acquitting the respondents of the charge of having committed offence under Sections-143,147, 148,149 read with 307, 307 read with 34, 149 read with 34, 324 read with 34, 149 read with 336, 336 read with 34 and Section 427 of the Indian Penal Code, so also under Section 37(1) read with 135 of the Bombay Police Act.

3. It is the prosecution case that Nandkishore Ekbote who is the office bearer of Akhil Bharatiya Krishi Go Seva Sangh used to rescue the cattles brought in the market at Pune and assist the police machinery in taking action under the Animal Preservation Act, 1976. According to the prosecution, prior to the incident in question, on 29.4.2004, the volunteers of Akhil Bharatiya Krishi Go Seva Sangh had rescued certain bullocks with the assistance of the Hadapsar Police for which Nandkishore Ekbote lodged a complaint against the persons of which proceedings were initiated in the Court of J.M.F.C Lashkar Court, Pune. The case was fixed on 2.6.2004 and the complainant as well as the accused persons were in the court. The Court adjourned the matter at 3.30p.m. by directing the police that the seized cattles/bullocks be kept in the cattle pond. It is the case of the prosecution that after the decision of the court, all the members of Qureshi community left the court in angry mood and they noticed the complainant Ramchandra Ambekar who was driver of the sumo owned by Nandkishore Ekbote and assaulted them near Ali Somaji Petrol Pump. The complainant identified the assailants as Anis Qureshi, Sadiq Qureshi and other 12 to 15 persons who had pelted stones towards the sumo in which the complainant Ambekar and volunteers of Akhil Bharatiya Krishi Go Seva Sangh were travelling.

According to the prosecution, some assailant were holding knives and swords with them and they attacked sumo vehicle and one of the assailant threatened to kill them. After the incident, Mr. Ambekar lodged a report with the concerned police station, on the basis of which investigation was conducted and charge sheet came to be filed.

4. During the trial the respondents/original accused took defence of alibi and examined Police Inspector Mr. Agashe to show that all the accused persons were present in the court of J.M.F.C. Lashkar Court at Pune till 5.00p.m. where Police Inspector-Agashe was posted for bandobast duty. The Trial Court after considering the evidence of the complainant and other witnesses found that their evidence was inconsistent and contain contradictions and omissions and therefore, cannot be relied upon, in so far as the complicity of the respondents in the incident was concerned. Further, the trial court found that the defence taken by the respondents is reliable as independent witness in the rank of Police Inspector was examined who supported the case of accused persons being present in the court till 5.00p.m.

5. It is pertinent to note that at the very initial

stage of remand an application was made by the accused persons to record the statement of Police Inspector Mr. Agashe but it appears that the investigating agency did not consider it necessary and therefore, he was called as a defence witness.

6. We find that the view taken by the Trial Court cannot be said to be perverse as it has properly analysed the evidence on record. Considering the discrepancy in the oral evidence of the complainant and the witnesses who were injured, justified in recording an acquittal. Therefore, application seeking leave to prefer an appeal is rejected. As a consequence of which, the appeal stands dismissed.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)